

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved On 03.10.2019****Order Delivered On 20.12.2019****CRR No. 253 of 2018**

- Smt. Krishna Ramteke W/o Dheeraj Kumar Ramteke Aged About 38 Years R/o- House No. 1054, Kurud Road Kohka, Bhilai, Tahsil And District Durg, Chhattisgarh.

---- Applicant**Versus**

- Deeraj Kumar Ramteke S/o Mahaveer Ramteke Aged About 38 Years Occupation Government Servant, Railway Department, Occupation O.S., R/o Qtr. No. 26, C.H.S.C.L. Quarter Sector 37,c, Sector-07, Bhilai Nagar, P.S. Sector 06, Kotwali, Bhilai Nagar, Tahsil And District Durg, Chhattisgarh.

---- Respondent

For Applicant : Mr. Sumit Singh Rathore, Adv.
 For Respondent : Mr. Vipin Tiwari, Adv.

And**CRR No. 451 of 2018**

- Dhiraj Kumar Ramteke S/o Mahavir Ramteke Aged About 38 Years Occupation Government Service, Railway Department, Posted As O. S., R/o Qtr. No. 26, C. H. S. C. L. Quarter Sector 37-C, Sector-07, Bhilai Nagar, P. S. Sector-06, Kotwali, Bhilai Nagar, Tahsil And District Durg Chhattisgarh

---- Applicant**Versus**

- Smt. Krishna Ramteke W/o Dhiraj Kumar Ramteke Aged About 38 Years R/o House No. 1054, Kurud Road Kohka, Bhilai, Tahsil And District Durg Chhattisgarh

---- Respondent

For Applicant : Mr. Vipin Tiwari, Adv.
 For Respondent : Mr. Sumit Singh Rathore, Adv.

Hon'ble Smt. Justice Rajani Dubey**C.A.V. Order**

20.12.2019

1. Since, common question of law and fact is involved in both the revisions, they are being heard analogously and are being decided by this common order.

2. Smt. Krishna Ramteke, wife, filed an application under Section 125 of Cr.P.C. pleading inter-alia that her marriage was solemnized with Deeraj Kumar Ramteke on 07.03.2003 before Registrar of marriage. After some time of marriage, her husband and his family members started harassing her which lead to filing of FIR and due to this, Dheeraj Kumar Ramteke expelled her from his house and wanted to marry another lady. After that, applicant (wife) in CRR No. 253/2018 is residing separately without any source of income and without any support from her family members. Respondent (husband) in CRR No. 253/2018 and applicant in CRR No. 451/2018 is a Railway employee, earning Rs. 50,000/- per month and he is also associated with the business of health supplement from which he is earning a very huge income. Therefore, Rs. 50,000/- per month be granted to her as maintenance, as she is unable to maintain herself.

3. In the reply filed before the Family Court, the husband, submitted that applicant/wife was used to go to her parental house without any rhyme or reason and she herself did not want to live with him. He never misbehaved with his wife, she is an educated lady, she runs beauty parlor, photo copy shop and earns Rs. 15,000/- per month. On the contrary, his salary is only 22,000/- per month and his old aged parents are totally depended upon him so, wife is not entitled for maintenance.

4. Learned Family Court, by impugned order dated 31.01.2018, recorded a finding that Krishna Ramteke is wife of Dhreeraj Kumar Ramteke and she is unable to maintain herself and residing separately whereas the husband is the person having sufficient means to make payment and wife is entitled for maintenance. Husband has refused to maintain her without any reasonable cause and, as such, she is entitled for maintenance of Rs. 8,000/- per month from the date of the order.

5. Against the order of granting maintenance, husband has preferred Criminal Revision No. 451/2018 for setting aside the order of maintenance whereas, wife has also preferred Criminal Revision No. 253/2018 seeking enhancement of the amount of maintenance. Both the revisions have been clubbed together and are being heard analogously.

6. Mr. Sumit Singh Rathore, counsel appearing on behalf of Smt. Krishna Ramteke (wife) applicant in CRR No. 153/2018 and respondent in CRR No. 451/2018 submitted that undisputedly, Dheeraj Kumar Ramteke (husband) is earning Rs. 50,000/- per month, he is a government servant and the amount of maintenance awarded of Rs. 8,000/- per month is a meager amount and, therefore, the same may be enhanced suitably by modifying the order of the Family Court.

7. Mr. Vipin Tiwari, counsel appearing on behalf of Mr. Dheeraj Kumar Ramteke (husband) submitted that Smt. Krishna Ramteke (wife) is not at all entitled for maintenance as she has not produced any material evidence which can prove the income of respondent (husband). On the other hand, wife is an educated lady, she runs beauty parlor & photo copy shop and earns Rs. 15,000/- per month. He further submitted that learned Family Court ought not to have relied upon the evidence of Krishna Ramteke (wife) as well as false story which was cooked by wife regarding the assault made by the husband. He next submitted that before Judicial Magistrate First Class, Durg, in MJC No. 569/2015, an application was filed by wife against the husband under Sections 12, 20, 22, 23 and 31 of Domestic Violence Act, which was allowed by the Court and directed the husband to pay Rs. 4,000/- per month to the applicant(wife) and this fact has been deliberately concealed by the wife in the application filed before the Family Court Durg. So, his revision petition (CRR No. 451/2018) may be allowed and the impugned order dated 31.01.2018 is liable to be quashed.

8. Heard learned counsel for both the parties and perused the material on record including the impugned order.

9. The question which remain for consideration before this Court is that:

(I) whether application filed by the wife is liable to be quashed?

and/or

(II) if not, whether the maintenance granted to wife deserves to be enhanced?

10. Be that as it may, it is not in dispute that marriage between the parties was solemnized in the year 2003 and it is also not in dispute that since 2012 wife is residing separately.

11. Learned trial Court as well as learned Family Court, after appreciating the evidence led by both the parties, find that Smt. Krishna Ramteke (wife) is residing separately with the sufficient cause i.e. because of misbehave and torture committed by husband and this finding of both the Courts below is in accordance with the evidence available on record as well as in accordance with law and the Family Court has rightly granted the monthly maintenance in favour of the wife.

12. The much highlighted grievance of Dheeraj Ramteke (husband) is that there is no substantive piece of evidence to prove his earning, though, the fact is that he was appointed in the year 2004 as a Gangman in the Railway Department and, at present, he earns only Rs. 22,000/- per month after deduction. Earlier, an application was filed by wife against the husband under Section 12, 20, 22, 23 and 31 of Domestic Violence Act, which was allowed by the Court and husband was directed to pay Rs. 4,000/- per month to the applicant and this fact has been deliberately concealed by the wife before the Family Court, Durg.

13. It is clear from order-sheet that respondent (husband) filed an affidavit on 02.04.2016 and appeared for cross-examination on 30.07.2016 before the Family court, and in his cross-examination as well as in his examination-in-chief, husband also did not disclose the fact of previous maintenance order passed by Judicial Magistrate First Class, Durg and without knowing this fact, Family Court, Durg by its impugned order dated 31.01.2018, allowed the

application and directed the husband to pay Rs. 8,000/- per month to the wife as maintenance.

14. This order is related to dispute between the parties, which was not considered by the trial Court. Since, this is a dispute of family matter as also maintenance, this order should first be examined by the trial Court.

15. Thus, considering the overall aspect of the matter & evidence on record, this Court set aside the impugned order dated 31.01.2018 passed by the Family Court, Durg. The case is remanded back to the Family Court, Durg with a direction that both the parties shall inform the Court and produce the order passed by Judicial Magistrate First Class Durg, granting maintenance of Rs. 4,000/- per month and, after hearing both the parties, learned Family Court, shall decide the case afresh with regard to quantum of maintenance in light of order dated 22.01.2016 passed by the learned Judicial Magistrate First Class, Durg.

16. Both the parties through their respective counsel, are directed to appear before the Family Court concern on 10.02.2020.

17. Copy of this order be sent to the Family Court concern.

**Sd/-
(Rajani Dubey)
JUDGE**